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ELECTRONICALLY  
**FILED**

*Superior Court of California,  
County of San Francisco*

**02/27/2018**  
**Clerk of the Court**  
BY: VANESSA WU  
Deputy Clerk

7 Attorneys for Respondent  
CITY AND COUNTY OF SAN FRANCISCO

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11  
12 COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

13 SF URBAN FOREST COALITION, a  
14 California not-for-profit corporation,

15 Petitioner,

16 vs.

17 CITY AND COUNTY OF SAN FRANCISCO,  
18 a charter city and county, SAN FRANCISCO  
19 COUNTY TRANSPORTATION  
20 AUTHORITY, an agency and department of the  
21 City and County of San Francisco. TILLY  
22 CHANG, its Executive Director and CYNTHIA  
23 FONG, its Deputy Director for Finance and  
24 Administration, officials of the City and County  
25 of San Francisco, and DOES I through XX,  
26 inclusive,

27 Respondents.

28 Case No. CPF-18-516020

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RESPONDENT CITY AND COUNTY OF SAN  
FRANCISCO'S OPPOSITION TO PETITION  
FOR WRIT OF MANDAMUS**

Hearing Date: March 8, 2018  
Hearing Judge: Hon. Harold Kahn  
Time: 9:30 a.m.  
Place: Dept. 302

Date Action Filed: January 23, 2018

Petitioner San Francisco Urban Forest Coalition (“SFUFC”) acknowledges that it has brought this writ action “simply to obtain disclosure by Respondents San Francisco County Transportation Authority (‘SFCTA’) and its Executive Director, Tilly Chang … of withheld public records” related to an SFCTA meeting that occurred in January 2017. (SFUFC Mem. of Pts. & Auth. [“Pet. MPA”] at 1:2-7.) Yet SFUFC insists, erroneously, that this lawsuit also involves the City and County of San Francisco (“the City”). SFUFC has named the City as a respondent in the action, and the relief SFUFC seeks in its writ petition includes a declaration “that Respondent SFCTA is a part of the City and County of San Francisco and subject to the provisions of the San Francisco Sunshine Ordinance, San Francisco Administrative Code Chapter 67.” (Petition, p. 20.)

Because this public records action only seeks disclosure of records of SFCTA, the City is largely a bystander here. Moreover, because the City understands that SFCTA has already produced all of the documents in dispute to Petitioner, the dispute appears to the City to be wholly moot, and the Court need not – and, hence should not – rule upon Petitioner’s contention that SFCTA is an agency of the City and County of Francisco (or issue any other substantive relief).

Nevertheless, the City submits this brief in order to emphasize that Petitioner’s contention that SFCTA is a part of the City and is subject to the City’s Sunshine Ordinance is wholly erroneous. SFCTA is not an agency of the City and County of San Francisco, but rather is a separate legal entity, distinct from the City, created and governed pursuant to state statute. The issue is not merely academic, but rather is important to the ongoing functioning of the two entities. It is vital that the Court not be misled as to the fact that SFCTA is legally distinct from the City, and that the Court not issue any orders or award any other relief suggesting that SFCTA is an agency of the City and County of San Francisco, because to do so could easily create considerable confusion and have unanticipated negative consequences going forward, with respect to all manner of SFCTA and City operations.

**I. SFCTA IS AN AGENCY OF THE STATE, NOT OF THE CITY AND COUNTY OF SAN FRANCISCO**

The SFCTA is a special funding district created pursuant to California’s Bay Area County Traffic and Transportation Funding Act, found at California Public Utilities Code Section 131000 *et seq.* The Bay Area County Traffic and Transportation Funding Act

1                   was adopted in 1986 after the Legislature found that the Bay Area was  
2                   experiencing “serious traffic congestion and transit mobility problems that  
3                   threaten the economic viability of the area and adversely impact the quality of  
4                   life therein.” (§ 131001, subd. (a).) The Legislature addressed this problem by  
5                   establishing a framework whereby “the counties and cities within the nine-  
6                   county San Francisco Bay area” could “collectively develop and implement, on  
7                   a county-by-county basis, near-term local traffic and transportation projects that  
8                   responsibly and adequately deal with current and anticipated traffic congestion  
9                   and transit mobility problems.” (§ 131001, subd. (c).)

10                  *(Hayward Area Planning Association, Inc. v. Alameda County Transportation Authority* (1999) 72  
11                  Cal.App.4th 95, 99.) To this end, the Act “authorized the voters in each of the designated Bay Area  
12                  counties to create a ‘county transportation authority’ in order to ‘implement a retail transactions and  
13                  use tax for the purpose of funding a local transportation expenditure plan ....’ (§ 131001, subd. (e).)”  
14                  (*Id.*)

15                  It is California’s Public Utilities Code – and not any City law – that specifies the powers and  
16                  duties of every county transportation authority, including the SFCTA. The Public Utilities Code  
17                  mandates, for example, that every county transportation authority:

- 18                  • May sue and be sued. (Pub.Util.Code § 131281.)
- 19                  • “[M]ay make contracts and enter into stipulations of any nature to indemnify and hold  
20                  harmless, to employ labor, and to do all acts necessary and convenient for the full  
21                  exercise of the powers granted in this chapter.” (Pub.Util.Code § 131283.)
- 22                  • “[M]ay contract with ... any transit district, county, or city,” including the City and  
23                  County of San Francisco, “upon terms and conditions that the county transportation  
24                  authority finds is in its best interest.” (Pub.Util.Code § 131284.)

25                  Under the Bay Area County Traffic and Transporation Funding Act, every county  
26                  transportation authority – including the SFCTA – has its own budget (Pub.Util.Code § 131265(a));  
27                  § 131266), its own administrative code (§ 131265(b)), and its own staff (§ 131107). Every county  
28                  transportation authority may provide for the retirement of its employees. (*Id.*, § 131269.)

29                  Petitioner argues that the SFCTA must be an agency of the City because the SFCTA’s  
30                  commission is composed of the individuals who also are members of San Francisco’s Board of  
31                  Supervisors. But that is of no significance. “[w]ell-established and well-recognized case law holds  
32                  that “the mere fact that the same body of officers acts as the legislative body of two different

1 governmental entities does not mean that the two different governmental entities are, in actuality, one  
2 and the same." (*Pacific States Enterprises, Inc. v. City of Coachella*, (1993) 13 Cal. App. 4th 1414,  
3 1424 [Coachella Redevelopment Agency is legally distinct entity from City of Coachella, even though  
4 individuals making up City Council also make up Redevelopment Agency Commission].) The  
5 composition of the SFCTA Commission is the result of state law, within San Francisco as in any other  
6 Bay Area county that has chosen to have a county transportation authority.

7 SFCTA, therefore, is a creature of state statute, not of local law, both in its creation and in its  
8 operations. As such, SFCTA exercises authority that is conferred by the Legislature, not authority that  
9 arises from San Francisco's own municipal charter. SFCTA acts as a local agent of the State to plan  
10 and oversee local transportation initiatives. It is not an agency of the City and County of San  
11 Francisco, and thus is not subject to the City's Sunshine Ordinance.

12 **II. PETITIONER'S REQUEST FOR A WRIT DIRECTED AT THE DIRECTOR OF THE  
13 SAN FRANCISCO ETHICS COMMISSION IS GROUNLESS AND SHOULD BE  
REJECTED**

14 In the prayer for relief in its writ petition, Petitioner asks that this Court, *inter alia*, issue a  
15 peremptory writ of mandate "directing the Respondent Executive Director of the San Francisco Ethics  
16 Commission to immediately deliver to the Petitioner copies of all records improperly withheld by the  
17 Respondents." (Petition, at 20:24-26.) Since the Petition does not name the Executive Director of the  
18 San Francisco Ethics Commission, or any other City official, as a Respondent, we assume that this  
19 portion of Petitioner's relief request was included in error. Moreover, since we understand that  
20 SFCTA has already provided Petitioner with all of the documents in question, the dispute appears to  
21 be moot, and there is no ground for the Court to direct the issuance of any documents. However,  
22 should Petitioner genuinely seek the issuance of a writ directed to the Executive Director of the San  
23 Francisco Ethics Commission, the Court should not issue such a writ, because Petitioner has not even  
24 pleaded, much less demonstrated, that that official possesses any relevant documents or has any role or  
25 authority in the dispute between Petitioner and the SFCTA.

1 Dated: February 27, 2018  
2

3 DENNIS J. HERRERA  
4 City Attorney  
5 WAYNE SNODGRASS  
6 Deputy City Attorney  
7

8 By: /s/Wayne Snodgrass  
9 WAYNE SNODGRASS  
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11 Attorneys for Respondent  
12 CITY AND COUNTY OF SAN FRANCISCO  
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## **PROOF OF SERVICE**

I, HOLLY CHIN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102.

On February 27, 2018, I served the following document(s):

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT CITY  
AND COUNTY OF SAN FRANCISCO'S OPPOSITION TO PETITION FOR WRIT OF  
MANDAMUS**

on the following persons at the locations specified:

<p>Charles K. Seavey, Esq. 101 California Street, Suite 2710 San Francisco, CA 94111 Telephone: 415-365-7124 Facsimile: 415-365-9650 Email: seavey@corpjust.com</p> <p>Allen Grossman, Esq. 111 – 30th Avenue San Francisco, CA 94121 Telephone: 415-831-3720 Facsimile: 415-831-3721 Email: sfufc@mac.com</p> <p>Attorneys for Petitioner</p>	<p>NOSSAMAN LLP Stanley S. Taylor, III Carl L. Blumenstein Natasha S. Sheth 50 California Street, 34th Floor San Francisco, CA 94111-4799 Telephone: (415) 398-3600 Facsimile: (415) 398-2438 Email: staylor@nossaman.com cblumenstein@nossaman.com nsaggarsheh@nossaman.com</p> <p>Attorneys for Respondents San Francisco County Transportation Authority, Tilly Chang, and Cynthia Fong</p>
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in the manner indicated below:

**BY ELECTRONIC SERVICE:** Pursuant to San Francisco Superior Court Local Rule 2.10 and California Rules of Court 2.253(b)(2), I caused the documents to be served electronically through File & ServeXpress in portable document format ("PDF") Adobe Acrobat.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed February 27, 2018, at San Francisco, California.

HOLLY CHIN